

In rejecting independent claims 1, 12 and 44, the Office Action indicates that one of ordinary skill in the art would have been motivated to use a pleated or fluted filter, as taught by Frise, in a beverage cartridge as taught by Sylvan “in order to further augment the self-supporting aspect of the filter and under any condition of distortion including mechanical and thermal stresses and stresses of the filter being removed for washing and cleaning prior to re-insertion. In summary, to have made the Sylvan filter pleated or fluted as in Frise would make the filter more resiliently self-supporting.” (Office Action, page 4, lines 8-13)

As detailed in Section 8 of the attached Declaration Under Rule 132 (Declaration), the reasons articulated in the Office Action why one of ordinary skill in the art would have been motivated to make the asserted combination are technically inaccurate. That is, as described in detail in the Declaration, resiliency in a filter element in the Sylvan cartridge is not a desirable trait. Instead, the filter element construction disclosed in Sylvan would be relatively rigid so as to resist sagging or other distortion and avoid contact with the container walls when water under pressure is injected into the cartridge. Accordingly, one of ordinary skill in the art would not have viewed a flexible, resilient filter element as being suitable for use in a Sylvan cartridge, because such a filter element would be more likely to distort and come into undesirable contact with the cartridge walls.

Further, and as detailed in Section 8 of the Declaration, one of ordinary skill in the art would not have viewed the fluted filter element in Frise as being “self-supporting” as that term is used in Sylvan, e.g., at column 1, lines 50-53. That is, the filter element in Frise is flexible and molds itself to the brew basket in which it is placed. Thus, the filter element does not support itself, but instead relies on support from the brew basket on its sides and bottom. This is in contrast to the filter element in the Sylvan cartridge which is self-supporting in the sense that it is attached to the cartridge walls only at the filter element’s upper region and otherwise supports itself so as to avoid contact with the other portions of the cartridge interior, even during pressurized injection of water into the cartridge.

As a result, one of ordinary skill in the art would not have viewed a resilient, flexible, fluted filter element taught in Frise as being suitable for use in place of the conical filter element in

the Sylvan cartridge. The reason is that one of ordinary skill in the art would have understood that the resilient fluted filter element would tend to expand or otherwise distort when wetted and/or when high pressure water is introduced into the cartridge interior so that the filter element would likely contact the cartridge interior walls. In view of the fact that Sylvan expressly discloses that contact between the filter element and the container sidewall is to be avoided, one of ordinary skill in the art would not have had a reason to use the fluted filter element of Frise in the Sylvan cartridge.

Section 8 of the Declaration also addresses the Office Action's indication that one of ordinary skill in the art would have been motivated to use the Frise filter because of its ability to resist stresses of the filter being removed for washing and cleaning prior to re-insertion. As described in the Declaration, the filter element in the Sylvan cartridge is never removed from the cartridge for washing or cleaning, much less re-inserted into a cartridge container. That is, the Sylvan cartridge is intended to be a one-use device that is used to make a beverage and then is discarded. Thus, the ability of the Frise filter to withstand washing, cleaning and re-insertion would not have been viewed as relevant by one of ordinary skill in the art in the context of a Sylvan cartridge.

Section 9 of the Declaration describes that one of ordinary skill in the art would not have had a reasonable expectation of success in incorporating the fluted filter of Frise in a Sylvan cartridge, e.g., because the rigid top edge of the fluted filter in Frise would be difficult, if not impossible, to attach to the interior of the cartridge. Section 10 of the Declaration describes that because the function of a filter element in a drip-type coffee brewer is substantially different from the function of the filter element in a beverage cartridge that uses injected, pressurized water, teachings regarding a drip-type coffee filter cannot necessarily be extended to use in a beverage cartridge like that in Sylvan. For example, the filter element of Frise used in a drip-type brewer is supported by the brew basket on the bottom and sides and flow through the filter is mainly through the bottom of the filter due to gravity pulling the coffee beverage through the grounds. In contrast, in a Sylvan-type cartridge, water is injected under pressure, causing the beverage to pass through the filter sidewalls as well as through the bottom or lower regions of the filter. Section 10 of the

Declaration also describes that pleated or fluted filter elements do not have an established function in pressure-type brew cartridges like that described in Sylvan, and thus the use of such a filter element would not have been in accordance with an established function of such a filter element for that application. Instead, the known function for a fluted filter element was in drip-type brewing where the filter element sidewalls conform to and contact the supporting brew basket with flow occurring mainly through the bottom of the filter. There was no established function for a fluted filter element in a pressure-type beverage cartridge like that of Sylvan at the time this application was filed.

Applicant also notes that the Examiner's response to arguments on page 7 of the Office Action does not directly address statements regarding the fact that increased filter surface area is not necessarily advantageous in beverage cartridges like those described in Sylvan. Instead, the Office Action reiterates that Frise teaches to make a resiliently self-supporting filter that can withstand thermal and mechanical stresses and stresses encountered during washing and cleaning. It therefore appears that the Examiner has agreed that increasing filter surface area would not have motivated one of ordinary skill in the art to incorporate a fluted filter in the Sylvan cartridge.

In view of the foregoing and the attached Declaration, Applicant respectfully submits that the §103 rejections of claims 1-44 are improper, e.g., because the purported reasons why one of skill in the art would have made the asserted modification of the Sylvan cartridge are inaccurate. Applicant respectfully requests that these rejections be withdrawn.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned representative at the telephone number listed below.

In view of the foregoing, Applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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